No. 80-795

IN THE

Supreme Court of the United States

October Term, 1980

MICHAEL HEFFRON, Secretary and Manager of the Minnesota State Agricultural Society Board of Managers, HARVEYDALE MARUSKA, President of the Minnesota State Agricultural Society Board of Managers, the Members of the Board of Managers of the Minnesota Agricultural Society, and WARREN SPANNAUS, Attorney General of the State of Minnesota, individually and in their official capacities,
Petitioners,

vs.

INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS, INC., and JOSEPH BECA, on behalf of themselves and THE INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS members,
Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

BRIEF FOR PETITIONERS

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QUESTION PRESENTED

May the International Society for Krishna Consciousness and its members be exempt, under the First Amendment, from a Minnesota State Fair rule which requires that all persons or organizations who solicit money or sell or distribute materials during the annual 12-day fair do so only from a fixed location on the fairgrounds, when that rule is applied equally to all persons without regard to the content of their materials or religious beliefs?

PARTIES IN PROCEEDINGS IN MINNESOTA SUPREME COURT

There has not been any change in the parties participating in this case since the issuance of the Opinion of the Minnesota Supreme Court.

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BRIEF FOR PETITIONERS

OPINIONS BELOW

The Opinion of the Minnesota Supreme Court is reported as *International Society for Krishna Consciousness, Inc. v. Heffron, et al.*, 299 N.W.2d 79 (Minn. 1980). A copy of that Opinion also is found in the Joint Appendix hereto. (J.A. 58.) The Judgment and Order of Ramsey County District Court, state trial court, is unpublished but comprises Appendix B to the Petition for Writ of Certiorari to the Supreme Court of The State of Minnesota.

JURISDICTION

The Opinion of the Minnesota Supreme Court was filed August 18, 1980. This Court's order granting a writ of certiorari to review the Minnesota court's decision was issued January 19, 1981. In this case the highest state court in Minnesota ruled that Minnesota State Fair Rule 6.05, which has the force and effect of state law, is invalid as to respondents International Society For Krishna Consciousness, Inc. and its members under the First Amendment to the United States Constitution. The jurisdiction of this Court rests on 28 U.S.C. § 1257(3) (1980).

LAW AND CONSTITUTIONAL PROVISIONS IN QUESTION

Rule 6.05 (hereinafter "booth rule") of the Minnesota State Fair provides:

> Sale or distribution of any merchandise, including printed or written material, except under license issued [by] the Society [State Fair] and/or from a duly-licensed location shall be a misdemeanor.

The State Fair has the statutory authority to promulgate and enforce such rules under Minn. Stat. § 37.16 (1980). Rule 6.05 restricts the solicitation of funds and the distribution of materials by any person or organization to booths or similar fixed locations on the state fairgrounds. The parties agree that this is the proper interpretation of the rule, and it has been so interpreted by the Minnesota Supreme Court. *International Society For Krishna Consciousness v. Heffron*, 299 N.W.2d at 81-82; Stipulation of Facts at para. 16. (J.A. 34.)

The Minnesota Supreme Court held Rule 6.05 to be violative of the Krishnas' rights of free speech and free exercise of religion under the First Amendment to the United States Constitution, which provides in pertinent part:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of people peaceably to assemble, or to petition the government for a redress of grievances.

The foregoing proscriptions apply to the states by virtue of the Fourteenth Amendment to the United States Constitution.

STATEMENT OF THE CASE

This case centers on whether the Minnesota State Fair's booth rule may be applied, under the free speech and free exercise of religion clauses of the First Amendment, to members of the International Society For Krishna Consciousness (hereinafter "Krishnas" or "ISKCON"), an international religious organization. Based on a record of stipulated facts (J.A. at 30), a deposition of one of the Krishnas and several affidavits, the state trial court held that the booth rule could constitutionally be applied to the Krishnas and, thus granted summary judgment to the State Fair.[1] By a 5-3 decision,[2] the Minnesota Supreme Court reversed that judgment.

A. Minnesota State Fair.

During the late summer of each year the 12-day Minnesota State Fair is held on the enclosed state fairgrounds permanently located in St. Paul, Minnesota. This permanent facility occupies about 125 acres comprised chiefly of numerous permanent buildings, temporary structures, a race-track, carnival-type rides and parking lots, all surrounded by a chain-link fence connecting several entrance gates. (J.A. 25-27.)

Approximately one-third of the total fairgrounds acreage (i.e., 40-45 acres) constitutes the area generally occupied by the persons who attend, participate in and work at the fair. (J.A. 25.) The remaining area of the fairgrounds is utilized for housing, administration, storage, parking and other sup-

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[1] Petitioner Michael Heffron is the secretary-general manager of the Minnesota State Fair.

[2] Three justices of the Minnesota Supreme Court dissented in part, primarily on the basis that they would have sustained the booth rule as it applies to sales and collection of money or donations. ISKCON v. Heffron, *supra* at 85.

port activities. Thus, the annual fair tends to be constantly crowded. For example, during the five years preceding the decision of the trial court the average total attendance at the annual fair had been about 1,320,000. (J.A. 35.) The average week-day attendance had been 115,000, and the average daily attendance on weekends had been 160,000. (J.A. 35.)

The Minnesota State Fair is charged with providing an annual event that promotes "agriculture, horticulture, stock-breeding, manufacturers, and the mining, mechanical and industrial arts and sciences." Minn. Stat. § 37.15 (1980). Typically these purposes are represented by competitive livestock and crafts exhibits; exhibits of farm machinery and numerous garden, farm and manufactured products; concessions selling food and other products; carnival games and rides; and various entertainment performances (car races, singers, bands, etc.). Because of the booth rule all of these activities are carried out only from fixed locations. None of the exhibits or concession products, even those from religious, political and news media participants, are sold or distributed peripatetically throughout the fairgrounds. All participants at the fair are allocated fixed locations or booths from which they sell, distribute or exhibit their products. During the 1977 and 1978 fairs approximately 1,400 exhibitors and concessionaires rented booth spaces from the fair. (J.A. 35.) The State Fair's space rental system is grounded on a "first-come, first-served" philosophy; that is, those who apply for fairgrounds booth space are accepted in the chronological order of the dates of their applications. (J.A. 35.) The space rental fee is a fixed rate applicable to all concessionaires and exhibitors, based upon the sizes and locations of their booth spaces. (J.A. 27, 35.)

Since the number of space rental applicants each year exceeds the number of available booths, many applications are turned down and placed on a waiting list. Approximately 300-500 applicants for fairgrounds' concessions or exhibits are rejected annually solely because of lack of space. (J.A. 35.)

B. The Booth Rule And ISKCON.

Under Rule 6.05 the State Fair requires that the sale of any product, the solicitation of money and the distribution of all materials be done only at a rented booth or similar fixed location.[3] The rule, however, does not prohibit anyone who pays the customary Fair admission fee from proselytizing or discussing freely his or her beliefs on any subject while walking throughout the fairgrounds. (J.A. 28, 34.)

This rule is applied equally to all persons and groups on the fairgrounds. No organizations are singled out by the rule for any favored or unfavored treatment. In 1977, for example, the State Fair offered to rent booth space to the Krishnas for the purpose of carrying out their sales and solicitations activities. (J.A. 36.)

For many years the State Fair has rented booth space to at least 40 organizations of a religious, political, journalistic and charitable nature. Michael Heffron Affidavit of July 27, 1978, para. 10 and Exhibit "A", (J.A. at 46, 49-52). Examples of such organizations include: Abortion Rights Council of Minnesota, American Party of Minnesota, Church of Christ, Faith Broadcasting Network, Independent Republicans of Minnesota, Minnesota Conference of Seventh Day Adventists,

[3] The booth rule has been a provision in the State Fair booklet of rules and regulations since at least 1966. It was also carried in the rules booklet in a similar form prior to that date.

Salvation Army, Association of Evangelical of Greater St. Paul, Christian Educational Service, Minnesota Citizens Concerned For Life, Lutheran Colportage Service, Minnesota State D.F.L. Central Committee, Christian Research Group, Inc. and various Minnesota newspapers and broadcast media. *Id.*; Heffron Affidavit of August 25, 1977, at para. 12 (J.A. at 49-52).

ISKCON and its members seek to be exempted from the booth rule because of their status as a religious organization. They engage in a religious activity called Sankirtan under which the Krishnas go out into public places to chant and dance and to disseminate or sell religious literature and to solicit financial contributions. Stipulation of Facts at paras. 5 and 11, (J.A. 32).[4] The purpose of Sankirtan is to seek converts to Krishna Consciousness, spread "truth" and collect money for its religious, educational and publishing activities. *Id.* The Krishnas claim that they should be permitted to perform their sales, solicitations and distribution activities on a roving basis throughout most public areas of the fairgrounds and, thus, not be limited to a fixed location. The Krishnas, however, do not propose to chant, dance or sing in a peripatetic manner at the Minnesota Fair.

C. The 1977 Minnesota Fair And ISKCON.

The underlying controversy commenced on August 24, 1977, one day before the beginning of the 1977 Minnesota Fair, when the Krishnas filed and served their complaint and moved for a temporary restraining order against enforcement of the booth rule. The state district court judge granted the motion

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[4] The Minnesota Supreme Court interpreted the stipulated phrase, "going out into public places," as meaning peripatetic conduct. ISKCON v. Heffron, *supra* at 83, n. 7.

to the extent it sought to allow the Krishnas to proselytize, collect "donations" and distribute their materials in a peripatetic manner. The Court's order, however, prohibited the Krishnas from engaging in any "sales" activities except from a rented booth. (J.A. 29-30.)

Approximately 17 or 18 Krishnas then conducted their solicitations and distributions during five or six days of the 1977 fair. Joseph Beca deposition at 10 and 23. Of this number, at least five or six were identified as being residents of cities outside Minnesota (i.e., Kansas City, St. Louis, Louisville, and Charlotte, N.C.). *Id.* at 23-24. Respondent Beca, who was the leader of the Minneapolis ISKCON temple, testified that he personally collected approximately $900 during this period, although none of that money was obtained at a booth or similar fixed location. *Id.*

The record indicates that the stated purposes of Sankirtan and the temporary restraining order were not followed by some of the Krishnas at the 1977 fair. The unrebutted affidavits of State Fair General Manager Michael Heffron, police officer Dwayne Bronk, fair patrons Elizabeth Ann Murphy, Michael Gene Krogness and Glen Larson, and fair employee William Paddock reveal several instances of deceptive practices and violations of the restraining order. (J.A. at 44-57.) Generally the evidence showed that Krishnas misrepresented their identities for purposes of their solicitations and sold flags, buttons, fairground maps, flowers and books on a roving basis, in violation of the Temporary Restraining Order. Their solicitations techniques at the 1977 fair included: trying to sell items of a non-religious nature or seek donations from fairgoers as they attempted to get out of their cars upon arriving in fairgrounds parking lots; identifying themselves as agents of the State Fair, schools for needy children, the

division of natural resources, teachers of wayward and handicapped children; grabbing books and other items from fairgoers who refused to give monetary donations after being given these items as gifts; and seeking donations from minors. *Id.*

SUMMARY OF ARGUMENT

The Minnesota Supreme Court's decision is destructive, rather than supportive, of constitutional rights. In striking down the State Fair's booth rule, the Court invalidated a regulation that promotes equal access to the fairgrounds among a great variety of competing organizations. The rule merely requires that any person or group who wishes to sell or distribute materials or solicit money at the 12-day annual fair do so only from a fixed location on the fairgrounds. It has no effect whatsoever on persons who desire to proselytize or engage in discussions with fairgoers anywhere. Furthermore, the booth rule is not directed at the content of any speech or the substance of any religious beliefs.

Because of the limited restriction imposed by the rule, it should be analyzed in terms of whether it is a reasonable time, place and manner regulation that serves substantial governmental interests and whether those interests outweigh the effects of the rule on the Krishnas. The Minnesota Supreme Court correctly concluded that the booth rule did promote substantial governmental interests. Among those interests are the obligation to protect and enhance the constitutional rights of all fair participants and patrons and the duty to deter fraudulent or deceptive solicitations and to promote order and safety throughout the fairgrounds. These public purposes have been acknowledged as compelling not only by the Minnesota Supreme Court but also by this Court on numerous occasions.

It was error, however, to conclude that the interests of the Krishnas are greater than the public purposes of the rule and that the rule could accomplish those purposes in a less restrictive manner. The records in this case and similar cases, as well as the predictable consequences of exempting the Krishnas from the booth rule, show that the governmental interests and equivalent rights of other groups are more substantial than are the interests of the Krishnas.

The primary, if not exclusive, impact of the rule on the Krishnas is economic. That is, by limiting their monetary transactions to a fixed booth, the Krishnas might not obtain as much money as they could by selling and soliciting throughout the fairgrounds. Even under the booth rule they would be free to proselytize and to participate in conversations on a roving basis. The actual dissemination of religious beliefs, therefore, is not affected by the rule. Furthermore, by requiring all exhibitors and concessionaires to register with the fair at identified booths, the rule tends to insure that fairgoers make their purchases or donations with full knowledge of who the booth operators are and the purposes of their organizations. The deceptive practices of the Krishnas in this and other cases make the latter objective perhaps more important than usual.

The Minnesota Supreme Court's finding that the booth rule is not the least restrictive method for achieving the given governmental objectives is contrary to the record and reality. Under the rule the Krishnas and all other groups still have adequate alternative means for communicating and engaging in religious activities. Although a less restrictive version of the booth rule technically might be possible, it would not sustain the important governmental interests now served by the rule.

ARGUMENT

I. SINCE THE BOOTH RULE IS NON-DISCRIMINATORY, NON-PRECLUSIVE AND NON-CONTENT ORIENTED, THE STANDARDS FOR EVALUATING THE KRISHNAS' FREE SPEECH AND FREE EXERCISE OF RELIGION CLAIMS ARE IDENTICAL.

A. Description Of The Booth Rule.

At the outset it is important to recognize the kinds of restrictions which are and are not embodied in the Minnesota State Fair's booth rule. Ultimately, the rule permits proselytizing almost anywhere on the fairgrounds and provides equal opportunities for the dissemination of literature and the solicitation of money from fixed locations, usually in the form of rented booths.

It is undisputed that the rule applies equally to all persons or groups who wish to sell or exhibit products, solicit contributions or distribute materials at the fair. No preference is given to any group; applicants are rented booth space on a first-come, first-served basis. The so-called license fee of Rule 6.05 in reality is a space rental fee based upon the size and location of the booth space rented.

It is equally important to consider what Rule 6.05 does *not* entail. Such considerations weigh heavily in any factual analysis of the numerous cases involving First Amendment freedoms. First, the rule does *not* prohibit proselytizing per se throughout the fairgrounds. Second, the booth rule does *not* permit any State Fair official discretion in granting or denying applications from exhibitors and concessionaires. (J.A. at 35, 63.) Compare *Cantwell v. Connecticut*, 310 U.S. 296

(1940); *Hague v. C.I.O.*, 307 U.S. 496 (1939); *Wolin v. Port Authority of New York*, 392 F.2d 83, 90, 93 (2d Cir. 1968), *cert. denied*, 393 U.S. 940; and *Farmer v. Moses*, 232 F.Supp. 154, 162 (S.D. N.Y. 1964).

Third, the booth rule is *not* content-oriented. On its face and as applied, the rule does not distinguish among applicants on the basis of the content of their materials, and it does not restrict the content of any literature disseminated from a booth. (J.A. at 36.) Compare *Lewis v. New Orleans*, 415 U.S. 130 (1974) and *Cohen v. California*, 403 U.S. 15 (1971). Fourth, this case does *not* involve any abridgement of rights of religious beliefs or association. Compare *Elrod v. Burns*, 427 U.S. 347 (1976).

Finally, the booth rule does *not* represent a total prohibition of speech and religious activity. Any person who pays the fee to enter the fair may discuss religious or other beliefs without being affected by Rule 6.05. Compare *Hague v. C.I.O.*, *supra*, and *Schneider v. State*, 308 U.S. 147 (1939).

B. Both The Free Speech And Free Exercise Claims Together Are Subject To A Test Which Considers The Overall Reasonableness Of The Rule And Balances The Interests Of The Krishnas Against Those Of The State Fair.

Throughout this case the Krishnas have asserted that the booth rule violates their rights of free speech and free exercise of religion, although their legal arguments for both claims often have been undifferentiated. Similarly, the Minnesota Supreme Court's majority opinion includes both First Amendment rights within one analytical framework, even though its ultimate holding tends to be directed more to the right of free exercise of religion. Because of the type of regulation

at issue in this case, such an approach is proper. As shown more clearly hereinafter, the standards for reviewing free speech and free exercise claims are identical under the factual circumstances in the instant record.

A governmental regulation typically can abridge free speech in one of two ways: (1) by restricting the content or ideas represented by speech or publication, or (2) by regulating the flow of information or ideologies as an effect of attempting to achieve other purposes. An example of a content-oriented regulation is one which specifically prohibits particular statements as the primary objective. Compare, *Consolidated Edison Co. of New York v. Public Service Commission of New York*, —— U.S. ——, 100 S.Ct. 2326 (1980); *Lehman v. Shaker Heights*, 418 U.S. 304 (1974).

The second kind of regulation, non-content oriented, is typified by a governmental restriction aimed at achieving a police power objective such as safety, health, peace or order, with an attendant impingement of general speech. Examples would be ordinances which prohibit the use of loudspeakers in residential areas or picketing near schools. *See, Grayned v. Rockford*, 408 U.S. 104 (1972); *Kovacs v. Cooper*, 336 U.S. 77 (1949).

As to the content-oriented type of speech regulation, there is a presumption that it is violative of the First Amendment and, thus, must meet the highest standard of constitutional scrutiny. But, a governmental restriction of the non-content oriented variety is subject to a less stringent, balancing-of-interests test. *Konigsberg v. State Bar of California*, 366 U.S. 36, 50-51 (1961) (rules which only limit the performance of speech activities can be justified by countervailing governmental interests); *Cox v. New Hampshire*, 312 U.S. 569, 574 (1941) (rules not aimed at specific information are acceptable so long as they do not "unduly constrict" the flow of ideas).

Likewise, there is a distinctly stricter scrutiny of regulations controlling religious beliefs than those limiting activities or conduct related to religious beliefs. *Sherbert v. Verner*, 374 U.S. 398, 402-03 (1963); *Murdock v. Pennsylvania*, 319 U.S. 105, 110 (1943); *Cantwell v. Connecticut*, 310 U.S. 296, 303-04 (1940); *Reynolds v. United States*, 98 U.S. 145 (1878). With respect to a rule which is not prohibitive of any religious belief or ideology this Court stated in *Cantwell v. Connecticut, supra:*

> It is . . . clear that a state may by *general and non-discriminatory* legislation regulate the *times, the places and the manner* of [religious] soliciting upon its streets . . . and may in other respects safeguard the *peace, good order and comfort* of the community, without unconstitutionally invading the liberties protected by the Fourteenth Amendment.
>
> . . . .
>
> The general regulation, in the public interest, of solicitation, which does not involve any *religious test* and does not *unreasonably* obstruct or delay the collection of funds, is not open to any constitutional objection, *even though the collection be for a religious purpose.*

Id. at 304, 305 (emphasis added).

This Court in *Murdock, supra,* and *Cantwell* applied identical balancing tests to the free speech and free exercise of religion claims in those cases.

In the instant case the State Fair's booth rule is obviously of the non-content oriented variety. It is not in any manner directed at particular beliefs or information; rather, it has an ancillary impact on speech and religious-related conduct in pursuit of other governmental interests. The rule merely

restricts the location of speech and religious activity when they are accompanied by monetary solicitations or distributions of materials. Consequently, it is to be reviewed by balancing the interests of ISKCON with those of the State Fair. See Argument III, *infra*. *See Cox v. Louisiana*, 379 U.S. 536, 555 (1965).

The balancing test required in non-content speech and free exercise cases is a weighing of the harm suffered by those whose speech or religious conduct is restricted against the governmental purposes served by the regulation. These purposes must be "substantial," "significant," "important" or "compelling." *See Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council*, 425 U.S. 748, 771 (1976); *Grayned v. Rockford, supra*, 408 U.S. at 115; *United States v. O'Brien*, 391 U.S. 367, 376-77 (1968); *Lehman v. Shaker Heights, supra*, 418 U.S. at 303.

In addition, the balancing of interests often entails a consideration of four other factors. First, the analysis will be affected by the degree to which the rule falls unevenly on particular groups or persons. *Grayned v. Rockford, supra* at 109-110. Since the booth rule now in question does not discriminate against any person or group, there is no basis for that concern in this case except to the extent the Minnesota Supreme Court's decision creates a potentially discriminatory effect on other groups. The second inquiry is whether or not the regulation tends to close down traditional public forums or totally excludes groups from their use for speech or religious purposes. *Id.* Again, the State Fair's booth rule passes this test. The rule does not exclude Krishnas or anyone from entering the fairgrounds and speaking to others of their beliefs, and indeed it tends to keep the fairgrounds more equally accessible to all groups with ideas to communicate. The third factor to consider is that if the area in question is in some fashion a public

forum, the booth rule must be reasonable as to the "time, place and manner" of its restrictions. *Grayned v. Rockford, supra* at 115; *Cox v. Louisiana, supra* at 558; *Cox v. New Hampshire*, 312 U.S. 569, 574 (1941). Embodied within this test of reasonableness is generally a consideration of the "nature" or "pattern of normal activities" of the forum. *Grayned, supra* at 116; *Lehman v. Shaker Heights*, 418 U.S. at 302-03.

The fourth consideration in non-content speech and free exercise cases is less well defined. On the one hand, there have been decisions by this Court which indicate that a regulation must be the "least restrictive" means of serving the governmental interest. *See Sherbert v. Verner*, 374 U.S. 398 (1963) (free exercise of religion case). Yet, several other cases suggest that if the booth rule satisfies the other traditional tests cited above it will pass constitutional muster so long as it allows for appropriate alternative means of engaging in communication or religious activity. *See, e.g., Grayned v. Rockford, supra*; *Cox v. Louisiana, supra*; and *Cox v. New Hampshire, supra*. Accord, *Bell v. Wolfish*, 441 U.S. 520 (1979); *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, supra* at 771; *Kleindienst v. Mandel*, 408 U.S. 753, 765 (1972). In these cases an alternative means of gaining access to a forum was considered as a part of the "time, place and manner" analysis. Presumably, therefore, the fact that the booth rule in this case does allow other choices to the Krishnas for disseminating their views and collecting money makes the rule more reasonable.

Some pertinent conclusions can be drawn from the foregoing. First, and perhaps foremost, in a case such as this where the rule is not directed at the content of any speech or the beliefs of any religion, the Krishnas' rights of free speech and religion are co-extensive. By attacking the booth rule under

two First Amendment clauses, they are not entitled to any greater protections than they would have under either clause separately. Furthermore, the Minnesota Supreme Court's decision should be reversed if it can be shown that: 1) the booth rule serves a significant governmental interest; 2) it is reasonable as to the time, place and manner of its restrictions; 3) the interests served by the rule outweigh the impingement of the Krishnas' First Amendment rights; and 4) it either constitutes the least restrictive means for achieving the governmental objectives or allows for adequate alternative methods for the Krishnas to engage in their speech and religious activities.

II. THE BOOTH REQUIREMENT SERVES SIGNIFICANT GOVERNMENTAL INTERESTS IN A REASONABLE MANNER BY ENHANCING THE RIGHTS OF FAIR PATRONS AND PARTICIPANTS AND DETERRING DECEPTIVE AND FRAUDULENT CONDUCT AND PROMOTING ORDER AND SAFETY.

Even the majority Opinion of the Minnesota Supreme Court acknowledged the State Fair's compelling interest in having a booth rule to protect the safety, health, welfare and convenience of fair participants and patrons:

> We agree that these facts suggest a situation in which the state's interest in maintaining order is *substantial.* We have no doubt that Rule 6.05's requirement that all vendors, exhibitors and concessionaires perform their functions at fixed locations *furthers that interest significantly.*

299 N.W.2d 79, 83 (Minn. 1980) (emphasis added) (J.A. 64.)

Consequently, the Minnesota Supreme Court itself concluded that there is indeed a substantial governmental interest which is promoted by regulating sales, solicitations and distribution of materials on a crowded, confined fairgrounds. It is also agreed that the booth rule in question does further those interests. The only apparent basis for the Court's decision is its conclusion that the public purposes served by the rule do not outweigh the alleged harm to ISKCON and that the booth rule is not the least restrictive means of achieving the compelling governmental purposes. *Id.* at 84. Before addressing the latter conclusion, however, it may be helpful to review the public interests promoted by the booth rule.

A. The Booth Rule Protects The Rights Of Competing Exhibitors And Concessionaires And Fairgoers.

In reaffirming that First Amendment rights are not absolute and that reasonable accommodations must be made for competing groups, this Court has stated:

> Civil liberties, as guaranteed by the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses. The authority of a municipality to impose regulations in order to assure the safety and convenience of the people in the use of public highways has never been regarded as inconsistent with civil liberties but rather as one of the means of safeguarding the good order upon which they ultimately depend.

Cox v. New Hampshire, 312 U.S. 569, 574 (1941). Expanding upon the foregoing comments, Mr. Justice Stevens has stated that, "some forms of orderly regulation actually promote free-

dom more than would a state of total anarchy." *Consolidated Edison Co. of New York v. Public Service Commission of New York*, —— U.S. ——, 100 S.Ct. 2326, 2338 (1980) (Stevens, J., concurring).

1. Protection of the Rights of Exhibitors and Concessionaires.

The Minnesota Supreme Court's decision poses a potentially serious impairment of the rights of other participants in the fair. In conjunction with the "first-come, first-served" approach to fairgrounds space rental, the booth rule promotes the equal access and First Amendment rights of all those who sell, exhibit or in any manner participate in the fair.

As a state agency, the State Fair has an obligation to provide equal opportunities to all Minnesotans who desire to sell, distribute or exhibit products at the annual fair. Yet, the fairgrounds is only large enough to accommodate about 1,400 of the 1,700-1,900 applicants for space. Although many of the current concessionaires and exhibitors are of a commercial variety,[5] they too have First Amendment speech and association rights and equal protection rights under the Fourteenth Amendment. *See, Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council*, 425 U.S. 748, 750, 770 (1976); *Lehman v. City of Shaker Heights*, 418 U.S. 298, 304 (1974).

Even if purely commercial speech rights are deemed less substantial than those now asserted by ISKCON, certainly the 40 or more other religious, press and political groups leasing booth space have First Amendment rights equivalent to those of ISKCON. In *Murdock v. Pennsylvania*, 319 U.S. 105

[5] These groups also represent agricultural interests.

(1943), for example, this Court noted that the distribution of religious literature and the collection of donations were "age-old" forms of missionary evangelism. *See also Village of Schaumburg v. Citizens For A Better Environment,* 444 U.S. 620 (1980), (all charitable solicitations are protected by the First Amendment). Therefore, the Jehovah's Witnesses, Baptists, Lutherans, Catholics, Mormons and members of the Unification Church and the Church of Scientology and numerous other religious groups also are entitled to the same opportunities to exercise their evangelism and to collect religious donations as the Krishnas. *See Hynes v. Metropolitan Government of Nashville,* 478 F. Supp. 9, 11 (M.D. Tenn. 1979); *ISKCON v. Evans,* 440 F. Supp. 414 (S.D. Ohio 1977).

The representatives of the news media which participate at the fair also have "preferred" First Amendment freedoms. *See, New York Times Co. v. United States,* 403 U.S. 713 (1971); *New York Times v. Sullivan,* 376 U.S. 254 (1964) and *Schneider v. New Jersey,* 308 U.S. 147 (1939). Under the booth rule these persons now sell or distribute their newspapers and conduct their broadcasts from fixed locations.

Finally, there are numerous organized political parties and individual political candidates for governmental offices who now rent booths at the fair. Their sole objective is to convey, through written and spoken words, their political ideas and to persuade fairgoers to support them—by voting and contributing financially. The number of such candidates obviously multiplies during election-year fairs. These persons too have substantial free speech and free association rights under the First Amendment. *See, e.g., Elrod v. Burns,* 427 U.S. 347, 356 (1976); *Buckley v. Valeo,* 424 U.S. 1, 11 (1976).

However, the position of the Krishnas and the effect of the Minnesota Supreme Court's decision is to discriminate against

similar groups with equal First Amendment rights. The majority opinion below turned on its inference that Sankirtan required peripatetic solicitation and ignored the fact that other religions, political parties, etc. would be affected. It appears, in fact, that implicit in that opinion is an erroneous conclusion that the Krishnas' exercise of religious activity is entitled to greater constitutional protection than the free speech rights of competing organizations. Under that decision all groups other than the Krishnas would be required to stay in their present booths or, if not presently at the fair, remain on the space rental waiting list.

Thus, under the Minnesota Supreme Court's decision, the Krishnas have been granted special treatment at the expense of others with comparable or identical rights. The Minnesota Supreme Court's holding erroneously elevates the rights of the Krishnas above other organizations with equivalent rights and offends a core principle of the First Amendment that there is an equality of the status of ideas. *Public Department of the City of Chicago v. Mosley*, 408 U.S. 92, 96 (1972). The Krishnas' request for favoritism and special status should be denied.

2. Protection of the Rights of Fairgoers.

In assessing how well the booth rule promotes the governmental interests of public order and convenience, the rights of fair patrons also should be considered. Freedom of speech presupposes both a willing speaker and a willing listener. *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council*, 425 U.S. at 756, *supra; Lehman v. Shaker Heights*, 418 U.S. at 307, *supra*; and *Kovacs v. Cooper*, 336 U.S. 77, 86 (1949). Particularly in the context of this case, the annoyance

and harassment of fairgoers by roving solicitors are of more than slight interest.[6]

In some of the more traditional speech settings it has been said that if a listener can easily avoid or ignore unwanted speech, then the rights of a speaker may be superior. *See, e.g., Murdock v. Pennsylvania*, 319 U.S. 105 (1943) (door-to-door solicitations by Jehovah's Witnesses). Consequently, peaceful door-to-door solicitations have been permitted, since the "listeners" may easily refuse to open their doors, may close their doors to unwanted speech, or may post a sign on their doors announcing their unwillingness to have such contacts. *Id.* Likewise, persons who are passing through open airports, subway stations and other transportation terminals on their way to other destinations can often easily ignore unwanted solicitations during their brief stays in such facilities.

A fairgrounds, however, has a much different audience and should be subject to greater restrictions. Cf., *Kovacs v. Cooper*, 336 U.S. at 87, *supra* (even speech near city streets is not beyond reasonable controls). Unlike a "listener" in his home or passing temporarily through an open park or transportation facility, a person who attends a state fair pays an admission fee and enters usually for the express purpose of staying several hours or all day to observe or participate in those activities of special interest to him. If a fairgoer does not wish to hear certain vendors who may try to persuade him to buy a product, participate in a game or ride a carnival ride, he may easily walk away from those vendors' booths or totally avoid walking in certain fairgrounds' areas (e.g., the carnival mid-

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[6] *See also* Prince v. Massachusetts, 321 U.S. 158 (1949) (state has a significant interest in protecting minors); and International Society for Krishna Consciousness v. Barber, No. 77-CV-328 (N.D. N.Y., filed Aug. 25, 1980) (additional examples of harassment and deception of fairgoers by Krishnas).

way) with the knowledge that he will not be contacted by those vendors again. He may then spend his time only on those exhibits or concessions for which he paid his entrance fee.

The Minnesota Supreme Court's decision, however, has a detrimental effect on thousands of fair patrons who may wish to avoid repeated solicitations. Fairgoers could totally leave the fairgrounds, forfeiting their admission fees, in order to avoid numerous roving solicitations. Or, at least, the fairgoers may be forced to leave a fairgrounds section in which they had been interested (indeed, which may have been their primary attraction) in order to avoid roving solicitors in that area. Or, they would be required to reject repeatedly unwanted flags, books, buttons, flowers, maps, etc. from ISKCON and other similar groups. For, with numerous roving solicitors, it is likely that many fair patrons would be approached several times by persons representing different groups or even by the same solicitors. Such choices are unreasonable.[7]

In our society it is to be expected, of course, that persons who go out into public places such as parks, airports and city streets may come in contact with speakers who espouse views which annoy or offend them. The ability to walk away from or avoid such contacts is a small price to pay for preserving First Amendment freedoms. But, such ability is not realistically available to one who enters a closed fairgrounds, a ball park or some other entertainment event. It is, therefore, unfair to grant ISKCON and similar organizations rights which have a disproportionately adverse impact on the fairgrounds audience.

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[7] Compare ISKCON v. McAvey, 450 F. Supp. 1265, 1270 (S.D. N.Y. 1978) (court refused to permit a situation in a trade center whereby persons would be forced to leave certain areas merely to avoid unwanted communications).

B. The Police Power Objectives Of Reducing Fraud And Promoting Order And Safety Are Furthered By The Rule.

1. Prevention of Fraud and Deceptive Conduct.

This Court has repeatedly recognized the substantial interest a governmental unit has in protecting its citizens from fraudulent solicitations, deceptive or false speech and undue annoyance. *Village of Schaumburg v. Citizens For A Better Environment*, 444 U.S. 620, 100 S.Ct. 826, 836 (1980); *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council*, 425 U.S. 748, 771 (1976); and *Niemotko v. Maryland*, 340 U.S. 268, 277 (1951). *See also*, Miekelejohn, *Commercial Speech and the First Amendment*, 13 Cal. W. L. Rev. 430, 499-500 (1977).

In *Village of Schaumburg, supra*, this Court reaffirmed the principle that protecting the public from fraud and undue annoyance was an "indeed substantial" governmental interest.[8] *Id.* at 836. The comment in *Schaumburg* was premised on this Court's earlier statement in *Cantwell v. Connecticut*, 310 U.S. 296, 306-07 (1940):

> Even the exercise of religion may be at some slight inconvenience in order that the state may protect its citizens from injury. Without doubt a *state may protect its citizens from fraudulent solicitation* by requiring a stranger in the community, before permitting him publicly to solicit funds for any purpose, to establish his

[8] In the Schaumburg case this Court struck down a local ordinance which prohibited charitable organizations from soliciting funds unless at least 75% of the receipts were used directly for charitable purposes. The 75% restriction was deemed to have had little connection to the prevention of fraud or deceptive conduct. Also, the record in that case did not contain any evidence that the appellees had, in fact, engaged in deceptive solicitations.

> identity and his authority to act for the cause which he purports to represent. The state is likewise *free to regulate the time and manner of solicitation generally, in the interest of public safety, peace, comfort or convenience.*

(Emphasis added; footnote omitted.)

The need for a booth rule to prevent or reduce fraudulent or deceptive solicitations on the Minnesota fairgrounds is strong. Where thousands of people of all ages and abilities are moving about in a 40- to 45-acre area the opportunities for unscrupulous persons to collect money through deceptive sales and solicitations are many. Those who would engage in such conduct are further attracted by the fact that almost every fair patron enters the fairgrounds with money and an intention to spend it. In many cases these patrons are youths who may be even more susceptible to a deceptive sales pitch by a roving vendor.

The booth rule was drafted to enhance the ability of fairgoers to become informed of the identity and purpose of all salespersons. Under the rule, persons who attend the fair know that they will not be subjected to "hit and run" solicitations and that if they are approached by roving vendors, the fairgoers will know such activity is contrary to State Fair rules.

The State Fair would not have any realistic ability to prevent or minimize fraudulent solicitations without a rule that requires all solicitors to register with the State Fair and to confine their activities to a known fixed location. The booth rule was, therefore, adopted many years ago as a means of combatting and reducing the instances of fraudulent sales and solicitations.[9]

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[9] According to the 1976 edition of the Minnesota State Fair booklet of rules and regulations the booth rule has been in existence since at least 1966, many years before the commencement of this action.

Several examples of why the booth rule is necessary occurred at the 1977 Minnesota Fair. That was when the Krishnas refused to abide by the Minnesota rule, and under a temporary restraining order,[10] conducted roving sales and solicitations on the fairgrounds.

In the instant case the Krishnas who solicited at the 1977 State Fair deceived fairgoers as to their identities, the purpose of their fund-raising and the nature of their transactions. Krishnas solicited money while identifying themselves as agents of the division of natural resources, teachers for wayward and handicapped children, children with drug problems, agricultural schools and even the State Fair itself.[11] In addition, ISKCON members sold articles on a peripatetic basis in violation of the restraining order, often through a direct sales transaction or by presenting a fairgoer with a flower, book or other item as a "gift", only to take it back if a "donation" were not forthcoming. *Id.* Flowers, books, flags and fairgrounds maps were frequently forced on unsuspecting fair patrons, occasionally as they were attempting to get out of their car in the parking lot. *Id.* Finally, there was evidence that deceptive sales and solicitation tactics were used against minors. Affidavit of Heffron at 16 and Murphy, *supra.*

Not only is such activity misleading, fraudulent and annoying, it appears to be typical of the Krishnas' conduct at other fairs. *See, e.g., International Society for Krishna Conscious-*

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[10] The trial court initially restrained the State Fair temporarily from enforcing its booth rule in 1977, with the exception that the rule was enforceable as to "sales." Thus, 17-18 Krishnas proselytized and solicited throughout the fairgrounds for several days during the '77 fair. Deposition of J. Beca at 10 and 23.

[11] Affidavits of Heffron at para. 16 (July 27, 1978) (J.A. 47), Michael Gene Krogness (J.A. 53), William Paddock (J.A. 53), Elizabeth Murphy (J.A. 54), Glen Larson (J.A. 57) and Dwayne Bronk (J.A. 56.) Heffron's affidavit also indicates that 234 unsworn complaints were filed regarding the Krishnas' activities.

ness v. Barber, No. 77-CV-328 at 17-29 (N.D. N.Y., filed Aug. 25, 1980) (numerous "condoned" deceptive practices, including slurring the word "Krishna" to make it sound as "Christian" when soliciting); *International Society for Krishna Consciousness v. State Fair of Texas*, 461 F. Supp. 719, 720 (N.D. Texas 1978) (Krishnas refusing to make change for purchases, soliciting children and retarded persons).

The ISKCON leaders, of course, have stated that they instruct Krishnas to use only straightforward, non-deceptive methods in performing Sankirtan. *See*, e.g., Stipulation of Facts at paras. 11-12 (J.A. 33-34). They are advised not to harass potential donors or purchasers. *Id.* But, in reality, as shown by the record in this and other cases, such advice seems to be seldom given or is frequently ignored by many of the Krishnas. The experience of the Minnesota State Fair officials in 1977 certainly has taught them that they cannot rely on ISKCON's espoused non-fraudulent techniques of conducting Sankirtan.

In the face of evidence that First Amendment-related conduct has been performed fraudulently or illegally, it has been suggested that the proper remedy for such wrongs is through a criminal prosecution or civil lawsuit against each offender. In the context of this case, however, that suggestion is simplistic and impractical. The difficulties of policing fraud, thefts and assaults by solicitors roaming freely among thousands of persons in 40-45 acres would be overwhelming. To the extent a limited amount of fraudulent conduct already occurs at the fair, the booth rule confines it to registered locations allowing more accountability. It is clearly much easier to trace, locate, investigate and prosecute offenders when the incident occurs at an easily identifiable fixed location with a registered

owner or operator than it is when the offender is, at best, a face that disappears in the crowd.[12]

Often by the time a purchaser or donor has learned he or she has been deceived, the roving solicitor has vanished and any effort to locate a police officer or to report the incident fast enough is futile. In addition, the fair patron and/or the solicitor may be out-of-state residents. Indeed, at the 1977 Minnesota Fair several of the Krishnas were residents of Kansas City, St. Louis, Louisville and Charlotte, North Carolina. Beca Deposition at 23-24. The expense and effort of attempting to apprehend and prosecute the offender by means of a judicial proceeding weeks or months later usually are prohibitive. That problem would be compounded if the defendant, the victim and/or witnesses are residents of other states. In fact, if the defendant is a non-Minnesotan charged with misdemeanor fraud, it would be very difficult to convince the state of his residence to extradite him to Minnesota for prosecution.

Consequently, the alternative of using judicial sanctions against individual offenders is not realistic. If the Minnesota Supreme Court's decision is allowed to stand, it would force the State Fair either to give up any serious effort to combat fraudulent solicitations or, if economically possible, to increase greatly the size of its police force.

This court seems to have recognized that mere reliance on criminal prosecutions is not appropriate in such circumstances. In its recent decision in *Village of Schaumburg v. Citizens For A Better Environment, supra,* 444 U.S. at 637-38, fn.

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[12] Under the current booth rule system, when a fraudulent sale occurs at a concession or exhibit the State Fair may, at a minimum, suspend or revoke the space rental privileges of the registered booth owner.

12, this Court referred approvingly to an Illinois law that required charitable fundraisers to register with the Illinois Attorney General and to disclose certain information about their activities.[13] The government's attempt, beyond the use of criminal prosecutions, to protect the public from deceptive solicitations was approved:

> Efforts to promote disclosure of the finances of charitable organizations also may assist in preventing fraud by informing the public of the ways in which their contributions will be employed. Such measures may help make contribution decisions more informed. . . .

Id. (emphasis added and footnote omitted).[14]

It is, therefore, appropriate for the State Fair to do more than just rely on separate criminal sanctions to insure that fairgoers of all ages and abilities are making informed purchases or donations. The State Fair's booth rule is directly related to a substantial governmental interest in reducing deceptive and harassing conduct and is a more feasible response to such activities than mere reliance on separate prosecutions. For this reason alone, validity of the booth rule should be sustained.

2. Promotion of Order and Safety.

The relationship of the booth rule to the governmental objective of promoting order and safety on the fairgrounds should be considered both in terms of the factual record and

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[13] The decision in the Schaumburg case was issued after the Minnesota Supreme Court's decision in this case.

[14] *See also,* United States v. O'Brien, 391 U.S. 367, 379-80 (1968) (acknowledges the "difficulty of detecting and tracing" certain misconduct involving First Amendment-related activities) and International Society For Krishna Consciousness v. Barber, *supra,* at 41.

the logical consequences of the Minnesota Supreme Court's decision. *See Lehman v. Shaker Heights*, 418 U.S. 298, 304 (1974); *Cox v. Louisiana*, 379 U.S. 536, 554-55 (1965).

As noted above, each year there are approximately 1,300,000 people who attend the fair and about another 1,400 concessionaires and exhibitors who work there.[15] Most of these persons and the numerous State Fair staffs and employees are confined to an area equivalent to about 40-45 acres of the enclosed fairgrounds. Stipulation of Facts and Heffron Affidavit at para. 3 (July 27, 1978) (J.A. 45-46). Because of these congested conditions, it is undeniably critical for the State Fair to be able to exercise reasonable controls over the crowds and to provide speedy emergency health, fire and police services. Heffron Affidavit at para. 7 (J.A. 45).

Michael Heffron, Secretary-General Manager of the State Fair, stated that the congested fairgrounds made his responsibility for safety, health and welfare protections "burdensome and critical."[16] Many fairgoers and workers need medical care for injuries,[17] and, according to Mr. Heffron, his own 20 years' experience with the State Fair and his knowledge of difficulties at other state fairs have taught him that roving vendors and solicitors would make his crowd control task much more difficult.[18]

In addition, the experiences with just 17 or 18 Krishnas during only five or six days of the 1977 State Fair corroborate Mr. Heffron's statements. Aside from engaging in deceptions, members of ISKCON would join in pairs to solicit fair patrons or would approach someone getting out of his car in a parking

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[15] The average week-day attendance of fair patrons is 115,000 and the average week-end daily attendance is 160,000. (J.A. 35).
[16] Heffron Affidavit of July 27, 1978, at para. 7 (J.A. 45).
[17] *Id.* at para. 8.
[18] *Id.* at para. 18.

lot.[19] Little imagination is required to conclude that the same or greater numbers of Krishnas or other groups engaging in such conduct throughout a 12-day fair would exacerbate an already difficult problem.

For example, on a fairgrounds with thousands of people even a few roving solicitors would stand out and attract curious crowds disproportionately large to their numbers. Such random gatherings would occur more frequently when it becomes known that the person who is the center of attention is giving away or selling some products. In contrast, mere discussions among people are not unique on the fairgrounds. Fairgoers would be much more inclined to gather around a person who is giving away or selling products outside the confines of a fixed booth than if that same person were merely carrying on a conversation with someone else. The existence of peripatetic ISKCON solicitors practicing Sankirtan throughout the fairgrounds and parking areas would predictably lead to transient "booths," posing further obstructions to ambulances, fire trucks, etc.

In *Cox v. New Hampshire, supra*, this Court upheld a regulation that prohibited public parades or processions without a license. The evidence in that case showed that 68 ministers had violated that statute because they marched without a permit in four or five single-file groups[20] along the sidewalks of Manchester. 312 U.S. at 572. They did not appear to engage in any other activity except for carrying placards and distributing leaflets with religious and political messages. *Id.* The intersection nearest their procession ordinarily had 26,000 persons pass by per hour on Saturday nights. *Id.* Relying upon

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[19] Affidavit of Bronk at para. 3 (J.A. 56).

[20] It appears that only 14 to 17 ministers were in each single file group.

the state's interest to maintain public order, safety and convenience in such circumstances, this Court affirmed the convictions, even though there was no evidence in that record that the lack of a parade permit would lead to crowd control problems or overlapping processions by diverse groups.

The circumstances underlying *Cox v. New Hampshire* are less compelling than those of the instant case. The Minnesota fairgrounds are far more crowded, both with patrons and with participants who are known to be competing for the same space and audience. Furthermore, in *Cox v. New Hampshire*, this Court gave great weight to the logical consequences a contrary decision would have had.

Similarly, giving ISKCON an exemption to the booth rule does not take into account the increase in other groups who would demand the same exemption on First Amendment grounds. As noted above, at the time of the trial court's decision herein there were at least 40 other religious, political and news media organizations renting booth space at the Minnesota fair. Those groups and others like them have speech, press and religious rights equivalent to those of the Krishnas. *See also Village of Schaumburg v. Citizens For A Better Environment*, 444 U.S. 620 (1980); Argument II.A.1, *supra*.

The effect of abrogating the booth rule, therefore, would permit all religious, political and news organizations and their agents to engage in comparable peripatetic activities. The resulting chaos and moving pockets of unmanageable crowds throughout the fairgrounds would be severely detrimental to the State Fair's interest in maximizing public safety and order.

In summary, the booth rule makes several distinct and direct contributions to the State Fair's important interests of preserving order and safety and promoting the rights and

convenience of fair patrons and competing fair participants. Furthermore, such governmental interests are not founded upon "undifferentiated fears"[21] but are strongly supported by the facts in this case and similar cases and the logical consequences that would follow from the Minnesota Supreme Court's decision.

III. WHEN BALANCED AGAINST THE GOVERNMENTAL INTERESTS SERVED BY THE RULE, THE EFFECT ON ISKCON'S INTERESTS ARE MINIMAL.

The Krishnas' practice of Sankirtan has three principle objectives: spreading religious "truth" through sales and distribution of literature and other materials, seeking converts, and soliciting money. *United States v. Silberman*, 464 F. Supp. 866, 870 (M.D. Fla. 1979); Prabhupada, Preaching is the Essence (1977). The Minnesota Supreme Court inferred that Sankirtan must be practiced peripatetically,[22] although the trial court Stipulation of Facts does not express that as an aspect of the Krishnas' religious conduct. Although that inference is arguably improper, even that form of Sankirtan may be reasonably regulated. *See, e.g., Sherbert v. Verner*, 374 U.S. 398, 402-03 (1963); *Cox v. New Hampshire*, 312 U.S. at 574, 578, *supra*; *Reynolds v. United States*, 98 U.S. 145 (1878).

As shown above, the booth rule has no effect whatsoever on the ability of Krishnas to proselytize or discuss their beliefs anywhere on the fairgrounds. There is no prohibition of pure speech or religious beliefs or the contents thereof. The rule

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[21] Compare Tinker v. Des Moines Independent Community School District, 393 U.S. 503, 508 (1969). *See*, International Society for Krishna Consciousness v. Eaves, 601 F.2d 809, 830 (5th Cir. 1979).

[22] *See* J.A. at 64, fn. 7.

has a partial impact only on Sankirtan's first (sales and distributions) and third (solicitation of money) objectives.[28] That is, it does not prohibit the dissemination of religious materials or the collection of money; it merely limits such activity by all fair participants to particular locations.

The obligatory nature of Sankirtan itself, however, is drawn into question by ISKCON's own teachings and past practices. For example, in one of ISKCON's most widely distributed books describing their religion, it is suggested that chanting and dancing also are traditional, inherent aspects of Sankirtan. Prabhupada, Bhagavad-Gita As It Is, 43, 60, 143-44 (2nd ed. 1972). Yet, in this case and others the Krishnas themselves have been willing to forego the dancing and chanting features of Sankirtan even at a fixed location. See Stipulation of Facts at para. 11 (J.A. 33-34) and *ISKCON v. McAvey*, 450 F. Supp. 1265, 1267 (S.D. N.Y. 1978). In essence, therefore, ISKCON asserts that it alone may be the judge of which of the presumably equal aspects of Sankirtan may be restricted. Such a position makes the inherent, obligatory nature of the *roving* solicitations requirement of Sankirtan suspect.

In reality the major impact of the booth rule on the Krishnas, is purely economic. That is, the Krishnas' volume of sales and solicitations might be less if confined to a booth. The leader of the Minneapolis ISKCON temple, respondent Joseph Beca, testified repeatedly that no harm of any type would be suffered by himself or ISKCON if the booth rule were enforced against them. Deposition of Joseph Beca at 56-58. Even following rehabilitating questions from his attorney, Mr. Beca testified that the State Fair rule would probably harm

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[28] The spreading of Krishna "truth" also means persuading nonbelievers to make a monetary donation in order to attain "purity." See International Society for Krishna Consciousness v. Barber, No. 77-CV-328 at 9-10 (N.D. N.Y., filed Aug. 25, 1980).

ISKCON economically by making it less likely that Krishnas could collect as much money from a booth as they could on a roving basis.[24] *Id.* at 73-75.

The economic motivation of the Krishnas' arguments against the booth rule is buttressed by the Stipulation of Facts. It is agreed by the parties that the Krishnas have volunteered not to engage in singing, chanting or dancing on the fairgrounds. (J.A. 33-34.) Since such activities are also said to be inherent aspects of Sankirtan, it is clear that the reason for the Krishnas' opposition to the booth rule is their desire to collect as much money as possible. Therefore, with respect to the harm allegedly suffered by the Krishnas under the booth rule, it is no different than that suffered by any other religious or non-profit soliciting group.

Moreover, an underlying assumption to the claim that the booth rule would harm ISKCON economically is that it would result in fewer people making donations or purchasing books and materials. Even if such a result might occur, it is relevant to consider the reasons. If Sankirtan were limited to a booth, those fairgoers who are genuinely curious about or supportive of ISKCON would probably visit the booth and make the necessary purchases or contributions. The money would be collected almost exclusively from persons who had knowledge of the purposes for which their money would be used. If they did not have such knowledge before visiting the booth, they certainly would have it before leaving by virtue of the required ISKCON identification signs on the booth. In fact, even under

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[24] Mr. Beca also testified that the booth rule would make it more difficult for Krishnas to reach as many people as they could by moving about the fairgrounds. *Id.* The rule, however, does not prevent proselytizing or conversations on any subject. Therefore, it would not restrict any religious group from discussing its beliefs with others or trying to convert them.

current State Fair policy, Krishnas could proselytize among and speak with fairgoers and then direct interested donors or purchasers to their booth.

In contrast, the bulk of the money the Krishnas might otherwise obtain *without* the booth rule would probably come from persons who are deceived or confused as to the identity of the Krishnas and the usages of their money. The experiences of those who were misled during the 1977 Minnesota fair are good examples.

It is possible, of course, that some fairgoers may give a minimal amount of money to roving solicitors simply to "get rid of them" and to avoid any further discussions or harassments. But, that reason also is hardly adequate to justify the Krishnas' exemption from the booth requirement.

Furthermore, the religious nature of some of the Krishnas' sales and solicitations practices is questionable. As shown by the records in this and other cases, they often sell or distribute flowers, buttons, flags, maps and incense. Such items are not the kinds of "religious" materials referred to by this Court in upholding door-to-door solicitations in *Murdock v. Pennsylvania, supra*, 319 U.S. at 110.

Consequently, when balanced against the harm that would occur to the State Fair, its participants and patrons if the booth rule were invalidated, the harm to the Krishnas and similar groups is minimal under the rule. Under such a balancing test, the booth rule is a reasonable time, place and manner regulation that provides alternative channels of communication and is appropriate to a crowded and limited area such as the state fairgrounds. The assumption that complying with the booth rule would reduce the economic gain of the Krishnas, even if true, is not an adequate basis for impinging upon the governmental interests by invalidating the rule.

IV. THE BOOTH RULE REPRESENTS THE MOST REASONABLE AND LEAST RESTRICTIVE TIME, PLACE AND MANNER REGULATION.

Whether a governmental regulation must constitute the least restrictive mode of controlling First Amendment rights or whether it simply must provide for adequate alternative means of communication has not always been clear from the case law. Some cases indicate that a given regulation must be the least restrictive means of serving governmental interests; others do not address that subject as a separate issue. Compare, *Grayned v. Rockford*, 408 U.S. 104 (1972); *Cox v. Louisiana*, 379 U.S. 536 (1966); *Schneider v. State*, 308 U.S. 147 (1939). *See also*, Argument I.B., *supra*. In any event, the State Fair's booth rule truly does represent the least restrictive method of accomplishing the public purposes described above.

The rule does allow unrestricted speech and religious proselytizing throughout the fairgrounds. It does allow equal access to the fairgrounds to everyone. *See Cohen v. California*, 403 U.S. 15, 21 (1971). And, it does permit the sale or distribution of any lawful product from a registered booth.

Any form of the rule which authorized peripatetic solicitations, however, would not be workable realistically and would impinge upon the governmental interests served by the current rule. For example, if the State Fair simply prohibited solicitations of minors or mentally handicapped persons and/or limited the total number of roving solicitors, enforcement of such a rule would be impossible. The same problems with respect to detecting, apprehending and prosecuting fraud and deceptive conduct by itinerant solicitors would also exist as to a rule prohibiting solicitations of certain groups of people.

Similarly, requiring solicitors to wear identification tags or placing a ceiling on the total number of solicitors would be futile, since on a crowded fairgrounds it would be impossible to know whether that restriction was violated. This problem would be compounded if other religious, political and news organizations also engaged in peripatetic conduct. State Fair officials simply would not realistically be able to determine whether each group were exceeding its maximum number of roving solicitors or whether proper identification tags were being worn in conspicuous places or worn at all. The State Fair's staff is just not large enough to do an effective job of detecting and apprehending violators moving freely among thousands of people. Prosecuting violators of such requirements would not be feasible, and even if they were expelled from the fairgrounds, they could easily re-enter at a different gate.

Furthermore, State Fair officials have numerous other demands requiring their attention. The responsibility for organizing and managing a 12-day fair as large as Minnesota's is a complex and large task. The staff must give round-the-clock attention to a variety of concerns including livestock competitions and shelter, carnival operations and ride safety, parking and transportation needs, health inspections, entertainment performances, trash disposal, ticket sales, effects of bad weather, etc. The amount of additional time and effort required to make special separate arrangements to register and monitor groups who are exempted from the booth rule would be significant and probably fruitless.

Moreover, a booth rule exempting the Krishnas alone would mean that ISKCON would gain a favored status over other groups with equally well established evangelical practices and

groups with equivalent rights to free speech and association. If, on the other hand, all of such groups could engage in some degree of peripatetic activity, it would lead to substantial police and safety problems. In either case, the result would be detrimental to the order, safety, health and convenience of all who use the fairgrounds. Reasonable alternative means of communications are readily available.

Indeed, the Minnesota Supreme Court's decision places the State Fair in an untenable position. It suggests that, because of Sankirtan, only the Krishnas may engage in roving solicitations. That holding, however, would violate the speech, religious and equal protection rights under the First and Fourteenth Amendments of other comparable organizations and is contrary to the holding in *Village of Schaumburg v. Citizens For a Better Environment, supra.* The State Fair would be forced to allow any other religious group also to conduct roving solicitations without questioning the ideological basis of such activity or to deny other groups the same rights given to the Krishnas until those groups "prove" the religious bases of peripatetic solicitations. Neither the State Fair *nor* the Krishnas are qualified to engage in proving or disproving the religious principles of other organizations.

It follows that the booth rule is a common sense approach to the problem of balancing the interests of competing exhibitors and concessionaires against the overall interest of all persons who attend and work at the annual fair. The Minnesota Supreme Court, therefore, erred in concluding that the rule is not the least restrictive form of regulation which adequately could protect the governmental interests at stake.

CONCLUSION

It is appropriate in this case to recall the comments of Mr. Justice Frankfurter in another First Amendment case, *Niemotko v. Maryland*, 340 U.S. 268, 275-76 (1951).

> It is important to bear in mind that this Court can only hope to set limits and point the way. It falls to the lot of legislative bodies and *administrative officials to find practical solutions* within the framework of our decisions.

(Emphasis added).

The above advice, in essense, was followed by the Minnesota State Fair in promulgating its booth rule. The State Fair officials are faced with the difficult task of conducting a large annual fair in a manner that maximizes the purposes of the Fair and enables a reasonable number of participants to have equal opportunities to present their views and products to more than 100,000 people daily crowded into an enclosed permanent area. There is no hint in this case that the booth rule was the result of unlawful motivation or a disguised attempt to single out certain groups for special treatment. To the contrary, there is every indication that the rule simply was devised as a "practical solution" to difficult problems. In every respect the rule is a reasonable time, place and manner regulation.

The governmental purposes supported by the rule are amply set forth in this brief and are expressly acknowledged as significant by the Minnesota Supreme Court. In contrast, the primary, if not exclusive, harm to ISKCON might be a possible reduction in the amount of money collected from fairgoers. Such an impingement on First Amendment freedoms is minor in contrast to the disorder, fraud, inconvenience and safety

problems that would surely occur without the booth rule. This conclusion is made even more compelling by the probability that most of the presumed loss of income would be attributable to those donors or purchasers who would be persuaded to give money under false pretenses or under a desire to terminate annoyance and harassment. That kind of loss plainly does not override the compelling governmental interests served by the rule.

Therefore, the decision of the Minnesota Supreme Court should be reversed.

Respectfully submitted,

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